United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-6072

To be argued by
WILLIAM R. KLEIN

B

In The

United States Court of Appeals

For The Second Circuit

In the Matter of WILLIAM ROBERT KLEIN a/k/a WILLIAM R. KLEIN,

An Attorney,

WILLIAM ROBERT KLEIN,

Appellant,

DAVID N. EDELSTEIN, Chief Judge, U.S.D.C.S.D. N.Y.,

Respondent.

APPENDIX FOR APPELLANT

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CLERK'S CERTIFIED RECORD ON APPEAL

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for the [illegible]

n the [illegible]

[illegible]

WILLIAM R. KLEIN

United States Court
[illegible]ern Di[illegible]
New York

Case No.M-2-238

ChJudge David N.Edelstein

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(add Notice of Appeal)
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EX PARTE
ORDER OF DISBARMENT

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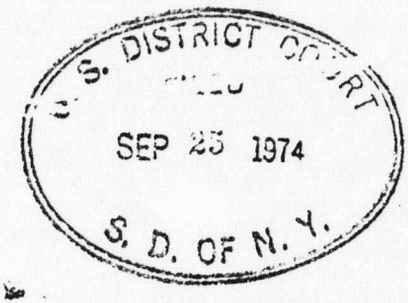

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

In the Matter : M 2-238

of

WILLIAM ROBERT KLEIN a/k/a
WILLIAM R. KLEIN : ORDER
an Attorney

- X

Upon the annexed certified copy of order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, dated June 29, 1965, and pursuant to local General Rule 5(d) of this Court, it is,

ORDERED: That the Clerk of the United States District Court for the Southern District of New York, strike the name of WILLIAM ROBERT KLEIN a/k/a WILLIAM R. KLEIN, from the roll of attorneys and counselors at law admitted to practice before the United States District Court for the Southern District of New York.

Dated: New York, N.Y.
September 25, 1974

Edward Weinfeld
CHEIF JUDGE

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1a

EX PARTE PROPOSED ORDER OF DISBARMENT VACATUR AND REMORANDUM

PRL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

WILLIAM ROBERT KLEIN a/k/a
WILLIAM R. KLEIN

An attorney

M-2-238

Upon the annexed affidavit of WILLIAM R. KLEIN sworn to the 17 day of October, 1974, and the attached Order dated September 25, 1974 signed by the Chief Judge of this Court, Hon. David N. Edelstein, in copy form, it is

ORDERED that the aforesaid Order of the Chief Judge be and the same is hereby revoked and cancelled and of no further force and effect, and as if the same had never been issued; and it is further

Ordered that any application that may be made hereafter affecting the standing of the above entitled Attorney shall be upon Notice, as provided for under Rule 5 of this Court.

Dated: New York, N.Y.
October , 1974

Chief Judge.

Exhibit #2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

WILLIAM ROBERT KLEIN a/k/a
WILLIAM R. KLEIN

An Attorney

M--2-238

County of New York, State of New York::SS::

WILLIAM R. KLEIN, being duly sworn, deposes and says:

I am the above entitled attorney, and have been a member of the Bar of this Court, since January, 1928, then duly admitted.

I make this affidavit in support of an application to have the original of the annexed copy of an order dated September 25,1974, on file herein,cancelled ab initio, and to be of no further force and effect, and as if the same had never been issued.

I first received a Clerk's True Copy thereof by certified mail , which arrived at my office address on October 8,1974. The receipt thereof was preceded by no notice of any kind by way of any formal proceeding, or notice of any charge of any kind or upom which my loss of attorneyship in this Court might be predicated.

In any event, Rule 5 of this Court , as I am advised
ovides the legal procedure by which one's loss of membership
an Attorney in this Court, and no proceeding or procedure was
d or brought on to my knowledge.

On learning indirectly that such a step had been taken,
immediately communicated with the Court and the Chief Judge's
ambers, addressed two letters to the Chief Judge, expressing
surprise and with statement of past history, and Chambers today
dvised me by telephone that the Chief Judge directed that formal
pplication be made. Said two letters were in all respects, and are
all respects true, Chambers having acknowledged receiving them.

WHEREFORE deponet asks that said order be revoked .

orn to before me this 17day of October 1974

William R. Klein

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ATTORNEY-RESPONDENT'S MEMORANDUM
IN SUPPORT OF EX PARTE ORDER
PROFFERED OCTOBER 21,1974 HEREIN
FOR THE CHIEF JUDGE'S SIGNATURE
IN INVOCATION OF HIS AUTOMATIC
ORDER OF DISBARMENT, OF 9-25-74.

A SUI GENERIS APPLICATION

Court Rule 5 is the jurisdictional base , to be sure, upon which this matter revolves. That Rule was applied in September 1965, on the heels of the State Court disbarment judgment offered as now again, then to the Chief Judge of the Eastern District . Order to show cause, with routine order of suspension included, was served upon respondent, on direction of the Chief Judge; who , upon hearing, then,the unique claim by respondent, that said State judgment's entry was preceded by no essential notice and no hearings had upon any charge, ordered the U.S.Attorney E.D.N.Y.) (Hon.Joseph P.Hoey)to make a full investigation of the record at the sources, to wit, the Appellate Division of Supreme Court, 2nd Dept.

This Report was filed September 10,1968; it declared that the judgment, both upon its face, and in the legal process which produced it, was a constitutional nullity. Subsequently the Order to Show Cause was vacated as to its suspension order, the respondent was ordered restored to good standing as a member of its Bar;and it was then recognised in said Report also that automatic disbarment in Federal Court,on basis of a state court judgment was repellant to Federal due process.

Of all this, the Clerk of the Appellate Division, and his Court was fully aware, and so that Court did nothing in any other jurisdiction, to assert that"nullity"judgment. When the State Court Clerk addressed the same latter dated August 13,1974, to the Clerk of

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Eastern District, that Clerk filed the letter with the papers of that above-recited proceeding. with nothing further ado(after 9 years).

Rule 5 cites (d) that a respondent "shall be disciplined to the same extent by this Court" as in the State Court previously,

> "unless an examination of the record resulting in such discipline discloses (ii) that the procedure was so lackin in notice or opportunity to be heard as to constitute a deprivation of due process"

and it goes on to impale itself, so to speak, upon the Court's sense of"duty" as to bar its"accept(ance)as final"the state court's "conclusion".

We submit that equity and conscience,and a sense thereof, in the Clerk of the State Court, should have required him to make disclosure to the Chief Judge of this Court and not thrust upon either its Chief Judge , or this respondent, the burden of discovery.

The uniqueness of this situation, in opposition to such "automatic"disbarment is, if you please, a repetition of the

trauma of an initial abrupt disbarment; and it were hardly to be anticipated, that in the remote recesses of this Court, such disruptive experience should recur, disruptive of important practise.

It would seem that censure, for such imposition upon a Chief Judge, knowingly withholding material facts of record, were rather in order; and that same could well take on the form of cancellation of the issued order, which was solely predicated upon that original void order.

Its facial voidness can be established by a mere comparison of its sparse recitals, with those constituting a valid judgment, as defined by Section 5011 of the State's Civil Practise Law and Rules.

CONCLUSION

THERE SEEMS NO GOOD REASON WHY THIS ATTORNEY SHOULD, ON THESE UNUSUAL FACTS, BE FORCED TO AGAIN ASSUME THE BURDEN , UNDER THE 30-DAY RULE, WHEN THAT RULE HAS ALREADY BEEN APPLIED BY A COURT OF EQUAL JURISDICTION NEAR-BY

Respectfully submitted

Dated N.Y. October 31, 1974

William R. Klein

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APPELLANT'S PROPOSED ORDER TO SHOW CAUSE AND AFFI

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN, a/k/a

WILLIAM R.KLEIN

M-2-238

An attorney

UPON the annexed affidavit of William R.Klein, sworn to the 5 day of November,1974, the Order of the Chief Judge herein, Hon.David N.Edelstein,D.J.,(and the true copy of the order and judgment of disbarment,dated June 29,1965 of Appellate Division, of the Supreme Court of the State of New York, 2ndDepartment,attached thereto), dated September 25,1974

LET cause be shown WHY the said order of the Chief Judge should not be vacated, under Rule 5 d of the Court Rules, on the grounds that (a) the judgment,upon which it is based dated June 29,1965 of the State Court, is void upon its face, in that it lacks essential recitals of due process had, as defined by the State statute governing the essential content of a final judgment(Section 5011 Civil Practise Law and Rules) (b) that,on its face,it lacks the essential recitals of due process for disciplinary proceedings of attorneys-at-law,in and for the State of New York;(c) that the same matter and issues were duly investigated , on demand of the Chief Judge of the United States District Court of the Eastern District of New York; and Report dated September 10,1968, was thereon duly filed on such direction , by the United States Attorney

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(Hon. Joseph P. Hoey) now presently on file in said Court, in matter similarly entitled (File No. 65 M 811); on the basis of all of which, hereinbefore set forth, respondent's motion then to dismiss the proceeding was granted without prejudice, by order dated May 20, 1969, vacating a temporary interim order of the Chief Judge for respondent's suspension from practice, pendente lite ; (d) that considerations of equity and justice should relieve this respondent of again assuming a burden of proof in the premises; and WHY respondent should not have

such other and further relief as may be appropriate in the premises.

LET respondent show said cause before me at my Chambers, in the United States Courthouse, at Foley Square , New York, Room , on the day of November, 1974, at A.M.(P.M.) or as soon as counsel may be heard.

Dated New York, November , 1974 ,

Chief Judge United States
District Court, Southern
District of New York

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9a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN a/k/a WILLIAM R. KLEIN

an attorney

M-2-238

County and State of New York::SS::

WILLIAM R. KLEIN, being duly sworn, deposes and says:

I am the above named attorney.

I make this application for the vacature of an order of the Chief Judge herein, Hon. David N. Edelstein, bearing date September 25,1974 reciting its issuance solely predicated

> "upon the annexed certified copy of order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, dated June 29,1965**"

I make this affidavit in support of an application for its instant vacature, if the Court please, in accordance with the provisions of Rule 5 d, and make it by Order to Show Cause as directed by the Chief Judge in Chambers communication to me, dated November 4,1974, adding that I

> "will not be required to effect service upon anyone."

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Before proceeding herewith, it may be fitting to note that same had been preceded by my letters addressed to the Chief Judge, upon discovering that my Federal bar membership in this Court had been subjected to an automatic cancellation , as it were; and also by my submission of a proposed Order seeking to have same set aside and vacated

"as if the same had never been issued",

together with a Memorandum, to cover " A sui generis Application" , deemed not quite within the situations named in Rule 5 d.

The letters were respectively dated October 2,15,21(enclosing said proposed Order) 25; the Memorandum dated October 31,1974 It would seem unnecessary to further burden the Court therewith except to attach herewith said Memorandum in renewed general support hereof. This proceeding may be deemed to begin with September 25 1974.

I trust I may be forgiven , if my reaction to the abrupt nature of the Chief Judge's order of disbarment,(itself duly done under the controlling Rule), was in the light of my State Court experience, which, as now demonstrated, was only slightly less abrupt; in that,incredibly , there was no essential notice then in 1965;or any hearings had on any charges, before that disbarment judgment was entered by the State Court.

Research has failed to disclose any precedent in the legal annals of New York, since 1735;when the Crown Judge then, without notice of hearings , disbarred the attorney for John Peter Zenger for his display of dedication to his client's cause; which he would not abandon on Judge's demands as history records.

My disbarment in 1965 was under not unlike circumstances of determined dedication, a retaliatory disbarment, as the underlying record shows. My right to practise here stems from 1928.

The order to show cause annexed, states four grounds upon which this required application is now made; and I shall deal

(11c)

NOTE #3

with each in order:(I ask that those letters and Memorandum be deemed read herewith as if a part hereof).

(a)The judgment is a nullity upon its face(and so, the U.S.Attorney in his report on file in the Eastern District, demonstrated)

Section 5011, CPLR reads as follows:

"Definition and content of judgment: A judgment is the determination of the rights of the parties in an action or special proceeding, and may be either interlocutory or final.A judgment shall refer to, and state the result of the verdict or decision, or recite the default upon which it is based.***"

Since no hearing was ever had prior to judgment before any court or referee,no decision is recited;and although at one stage in the proceedings, a default was claimed, none is recited.

(b)It is well known that every disciplinary matter in New York, irrespective of whether the attorney-respondent appears of fails to appear therein, answers or fails to answer, must go through the process of the taking of evidence, first in the preliminary inquiry body,and then upon referral by the Appellate Division, (the Court authorised to discipline) to the Referee named by the Court.

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WHEREFORE this attorney-respondent prays that the Chief Judge revoke and vacate the order of disbarment of September 2[illegible] 1974, and declare said revocation as metter of equity and justice in the premises.

Dated New York, November 5th, 1974

Sworn to before me this 5th day of November, 1974

RALPH F. CLEMENTE, Jr.
Notary Public, State of New York
No. 31-5720200
Qualified in New York Co[illegible]
Commission expires March 30[illegible]

William R. Klein

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ATTORNEY'S MEMORANDUM

~~764~~ 3211 Ch J Chambers

791-0247

CR16. Mailed SAT 7PM from Gr Cent P.O. Ch J Isolation

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN

An Attorney

MEMORANDUM IN SUPPORT OF EXPARTE APPLICATION FOR CANCELLATION OF THE CHIEF JUDGE'S ORDER OF AUTOMATIC DISBARMENT, ALSO EX PARTE
submitted in connection with
hearing held before the Chief
Judge on January 16, 1976

WILLIAM R. KLEIN
Applicant pro se
O.& P.O.Address
118 21 Queens Blvd.,
Forest Hills, N.Y.
11375 268 6320

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UNITED STATESDISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

WILLIAM ROBERT KLEIN

AN ATTORNEY

M 2 238

MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR CANCELLATION OF THE CHIEF JUDGE'S EX PARTE ORDER
(submitted in connection with hearing of 1 16 76)

The sole question before the Chief Judge, acting under Court Rule 5d, in his disciplinary authority here, is its application to a State Court judgment of disbarment, submitted ex parte to the Judge by letter with enclosure ofan exemplified copy of the said judgment, dated June 29, 1965, nine years after the event, without disclosure that a Rule 5 d application thereon had already been filed before the Chief Judge of the District Court of the Eastern District, immediately with the entry of that judgment, by petition for corresponding discipline of the United States Attorney, Hon. Joseph P. Hoey, proceeding No. 65 M 811.

Upon being faced with a claim by respondent, that the judgment of the State Court, upon which that proceeding was exclusively based., was void upon its face, and its issue had been preceded by no essential notice, and no hearings had on any charges, the Chief Judge ordered the U.S. Attorney to make full investigation of the claim, and the litigation that led to that judgment.

The U.S. Attorney's report to the Chief Judge, dated September 10, 1968, confirmed respondent's claims, of no essential notice and no hearings "BEFORE" entry of judgment, as required by Section 90 of the State's Judiciary Law, and as constitutes the due process for an attorney's disciplinary proceeding.

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The petition in that proceeding contained the usual interim order on respondent for suspension of practise pending the determination;and when the matter had been entirely submitted, but not yet determined by Judge Dooling, the U.S.Attorney General issued a Memorandum Order on all U.S.Attorneys, to cease prosecutions of local Attorneys, in favor of other organs available for such prosecutions;and thereupon, with no opposition , vocal or written,having ever since September 10, 1968, the actual 6-hour hearing had by the District Judge, after furnishing respondent with a copy of his investigation report, the District Judge dismissed the proceeding without prejudice, vacating his supension order, and thus fully reinstating the respondent Attorney.

No steps were ever again taken by any agency to renew any prosecution ;but as a result of a litigation, entirely foreign, an attorney saw fit to stir the Clerk of the Appellate Division, as a collateral counter measure, as a hopeful substitute for defending a 2 million dollar accounting suit, charging large scale embezzlement et al. Such is the genesis of the present proceeding at bar.

It should be noted that, at the outset, after entry , so abrupt, of judgment of disbar ment , an attorney firm of constituional specialists was retained, who promptly moved to vacate that entry, asserting in addition to the due process claims, that the Appellate Division 2nd Dept. Bench,consisting of the original Trial Judge, in the action in Queens County, from which the disciplinary proceeding exclusively arose, should transfer all issues to the deliberations of another Department, as then and now provided for by the Civil Practise acts of New York State ,and showing authorities,holding such retention and the original proceedings and judgment were thus a product of lasic bias, and also subject to claims of denial of due process;and moreover, the Court's refusal, to pass upon its own bias as claimed, was also denial of due process.(Holt v.Virginia, 381 U.S. 131; Tumey vs.Ohio, 275 US 510; Estes v.Texas,14 L.Ed.(2) 543, 550 (US Sup.Ct, citing Offutt v. U.S. 348 US 11, 14, holding that

"Justice must satisfy the appearance of justice"

(now, in haec verbis , become literally Court Rules(699.1 and 700.1 of the Appellate Divisions Second and First Departments,respectively).

15a

Retained counsel, on the record, found that the action of the Appellate Division had been retaliatory in nature, and it is that fact, as demonstrated, that alone can explain the otherwise inexplicable existence and persistence of this anomalous judgment, void upon its face, for lack of essential recitals to validate it (Section 5011, Definition of Judgment) and as the Eastern District U.S. Attorney also found, corresponding to the actual absence of all hearings and trial BEFORE entry of judgment; which, usually, for due process in New York State, take the form of a reference (in Brooklyn, usually presided over by a designated Supreme Court Justice; and who holds hearing, irrespective of whether the respondent has ever answered, or appeared before Grievance Committee, the Court or its Referee to answer.

It has been our constitutional claim also, that the State Courts have withheld from this respondent the 14th Amendment ~~of the~~ equal protection of the laws; in that when the judgment, and its findings of guilt, in Opinion of even date, was diminished, from eight or nine guilty offenses to four or so, the law, as laid down by the State's Court of Appeals, is that the collective penalty-imposing judgment must be vacated and a reassessment of penalty ordered. In that support on the hearing, applicant cited Re Del Bello (19 NY(2) 466, and the Sarisohn case, (decided December 7, 1967, ___NY(2)___' and now we cite the underlying U.S. Supreme Court authority therefor: Compers v. Buck Stove 221 US 408, 440

(It should here be noted, that we had always contended, that except for the one unnoticed charge, which finding of guilt thereon was thrown out, all the others were makeweight trivia; and we had shown specifically that each of those charges were in fact groundless as well.)

The Chief Judge's magisterium under Rule 5 d here can only be concerned with the mandate potential of the State Court judgment, being the sole and exclusive predicate of this Chief Judge's ex parte order of September 25, 1974, as therein recited.

And it may be said that no one has come forward to defend its potency, since the United States Attorney for the Eastern District acted, but the original Prosecutor has put in

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what must be described as mere pro forma appearances.

As matters now stand, the judgment, now under review, for Rule 5 d application, still rests on some 9 findings of guilt, and only some four of those findings of guilt technically and actually remain. OBVIOUSLY that judgment is not only a denial of due process and an unequal application of the laws, but is OBSOLETE.

In this connection, as a judgment without notice of hearings before entry, the applicant cited on the hearing the U.S.Supreme Court case of Simon v.Southern Railway 236 US 110, authorising the enjoining of the use and circulation of such a judgment, under Federal jurisdiction, though of state court origin.

In direct connection with the principles involved and recited in Court Rule 5d; we cited the Re Theard case, 354 US 278(1957). Also in this Connection, the U.S.Attorney of the Eastern District hadcited Re Ruffalo, 390 US 544.

It has been well settled that such judgment, as herein under view, can command no judicial respect from any Court: Mooney v.Holahan, 294 US 103. Also may be cited Ferguson vs.Crawford, 70 NY 253; Polack v.Anonymous, 7 AD(2)914, wherein the Supreme Court Justice Frankfurter, stands quoted from 330 U.S. at p.309, as follows:

> "Only when a Court is so obviously outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a Court be disregarded and treated as though it were a letter to a newspaper".

We have herein stated that the judgment was retaliatory in nature. We have, on the hearing, made reference to the Judicial Inquiry on Professional Conduct, which was Second Department's agency for investigation of complaints against attorneys; but in this case, the Order directing such inquiry was upon complaint of this applicant and his client of that day, October 1963. And the evidence before that Inquiry Body was directed, in turn, against the Complainants; and there was testimony by a prominent Member of the Bar, that he had been "commanded" by the aforesaid Trial Judge to bring prosecution against this appli-

cant, and that commanding Judge on January 1, 1965 ascended to the Appellate Division Bench; when, thereafter, the records of the Court revealed that he was participating in this respondent"s matter. The testimony of his "command" appears in the transcript of the the hearings of the aforesaid JIPC, held on January 29, 30, 1964.

We submit, that, in these unusual premises, our enumerations upon the hearing before Judge Edelstein, of the various Investigations that were held, of the strange unprecedented stripping of an attorney's license and livelihood, of the President of the City Bar Association and its earlier Inquiry by its Committee on Superior Courts, and of the U.S. Attorney are most relevant, being without researchable precedent sinct 1735 in New York.

We think, that we should here add that not only was there no essential notice of charge, and no hearing on any charge before entry of judgment of disbarment, but that was no OPPORTUNITY for any service or filing of an Answer, or hearings, because, suddenly respondent was confronted with entry of judgment, communicated by mail.

It is suggested in conclusion:

1. That if the Court doubts the assertions of fact, herein and on the hearing, made by applicant, rare as they may appear, this applicant will welcome a hearing with sworn testimony.

2. If the Court accepts these averments, then perhaps, in this unusual sui generis situation, the Bar Associations, whom applicant had repeatedly called upon to act, as amicus curiae, in vindication of the Bar, may be asked by the Chief Judge to come forward in such capacity.

3. If the Chief Judge is of opinion that this applicant as a respondent to charges, as yet duly unheard, is entitled to face those charges, free of the prior restraint and cloud on credibility, then such recommendation might, it is respectfully believed, might be made by the Chief Judge, insofar asthe Federal Court has been asked to act by the Clerk of the State Court.

CONCLUSION

In the absence of any hearing to be ordered, on any issue of fact in the record as presented to this Court on this Court Rule 5 d proceeding, by the ex parte applicant , The Chief Judge, having already ruled that an ex parte order in cancellation of the prior ex parte order of automatic disbarment , may be presented, and hearing had o' its propriety; on the record as now present and presented to the Chief Judge, should follow the report and recommendations, actual and implied , of the United States Attorney for the Eastern District , made under the order of the Chief Judge of the District Court of the Eastern District and duly filed therein, in the same Court Rule 5 d proceeding upon the same Judgment of discipline.

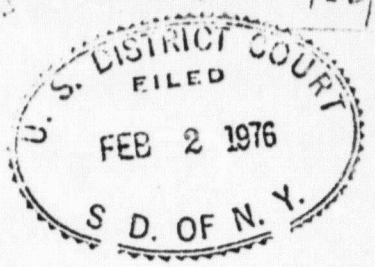
In respect of the operation of Court Rule 5 d, the issue herein is a narrow one.

Respectfully submitted

WILLIAM R. KLEIN
Applicant pro se
O.& P.o.Address
118-21 Queens Blvd.,
Forest Hills, N.Y.
11375 268-0320

ATTORNEY'S MEMORANDUM

Copy from file 2/18/76 Vesper Clk Rm 7
Date Read 2/20/76



A-4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- X

In the Matter of

WILLIAM ROBERT KLEIN

a/k/a WILLIAM R. KLEIN, an attorney

---------- X

M-2-238

OPINION

#43821

EDELSTEIN, Chief Judge:

Pursuant to Rule 5(d) of the General Rules of this court, [1] William Robert Klein was disbarred from the Bar of the United States District Court for the Southern District of New York upon the presentation of a copy of a state disbarment order issued by the New York Supreme Court, Appellate Division, Second Judicial Department. Mr. Klein thereafter moved this court for an order vacating its prior order of disbarment. This opinion is occasioned by that motion.

The issue presented to the court by Mr. Klein's motion is a narrow one: whether an examination of the record of the state proceeding discloses that the procedure "was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." [2] Such a disclosure would preclude this court from following the state determination. [3] The court has examined the entire record of the state court proceedings and has considered the arguments presented by Mr. Klein in his papers and in open court. [4] Mr. Klein's motion is denied.

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The state disciplinary proceedings against Mr. Klein were commenced on December 16, 1964, by petition and order to show cause. The petition alleged that Mr. Klein was guilty of seven specific acts of misconduct. [5] Mr. Klein responded by papers "answering . . . and in bar" of the proceeding which raised various legal arguments but which did not deny any of the acts of misconduct alleged in the petition.

On June 29, 1965, an order and opinion of the Appellate Division were issued disbarring Mr. Klein from the New York Bar. [6] The opinion recites the history of the proceedings to date, that Mr. Klein's papers failed to deny any of the charges raised in the petition, and that his legal objections are without merit. The opinion then concludes:

> When an attorney makes baseless written charges against members of the Judiciary and members of the Bar; is guilty of [acts of misconduct listed in the petition], he demonstrates such lack of character and fitness as to require his disbarment. [7]

It should be noted that the first listed basis of the court's conclusion that Mr. Klein should be disbarred - making baseless written charges against members of the judiciary and of the bar - was not included in the petition giving notice to Mr. Klein of the charges which were being brought against him.

The order of disbarment itself, of the same date, recites the history of the case and then, before actually ordering disbarment, states:

> Now on reading and filing the petition verified the 16th day of December, 1964, affidavits . . . and the answer of respondent and affidavit . . . and all the papers filed herein . . . and upon the per curiam opinion of this court, dated June 29, 1965 heretofore filed and made a part hereof, and due deliberation having been had thereon:
>
> It is Ordered . . . . 8 /

Mr. Klein moved to vacate the order in the Appellate Division stating, inter alia, that he had never received notice of the charge of making baseless written charges. 9 / His motion was granted to the extent of permitting him to serve an amended answer and referring the matter to a referee for the conducting of hearings and the rendering of a written report. 10 / The order of disbarment was never vacated.

Mr. Klein also appealed the original disbarment order and decision to the New York Court of Appeals. That court affirmed the Appellate Division's decree, stating that Mr. Klein had received an opportunity to be heard but had not raised any triable issues. 11 / The granting in part by the Appellate Division of Mr. Klein's motion, wrote the court, "assured [him] of an additional opportunity to be heard." 12 / Regarding the question of notice, the court stated that the order of disbarment:

LLa

> as its recitals demonstrate, was predicated solely on the charges contained in the petition and . . . we have disregarded the intimations in the Appellate Division's opinion that the appellant made "baseless written charges against members of the judiciary and members of the Bar" in view of the fact that the petition does not contain such a charge. 13 /

This court notes that the disbarment order, the relevant portions of which have been set forth above, does not indicate that only the charges specified in the petition serve as the basis of the order and does state that the order is based upon and incorporates the opinion of the court.

The United States Supreme Court denied certiorari. 14 /

Hearings were conducted before a referee pursuant to the Appellate Division's decision. After unsuccessfully moving for the disqualification of the referee Mr. Klein absented himself from the hearings even after being advised by the referee that the hearings would be continued in Mr. Klein's absence. 15 / The referee heard evidence presented ex parte and determined that three and one-half of the seven charges in the petition were supported by the evidence. 16 / His report was confirmed by the Appellate Division in an opinion which also denied Mr. Klein's renewed motion to vacate the order of disbarment.

Mr. Klein now contends that the state court order upon which this court's order was predicated is constitutionally defective since (1) it was entered without notice of all of the charges upon which it was based and (2) it was entered without any opportunity to be heard. 17 /

Mr. Klein's two grounds can be considered together. His assertion that the original state order apparently was based

upon a charge of conduct not included in the petition is correct. He was denied therefore the specific notice which he was guaranteed by federal law. [18] Moreover, to the extent that without notice of one charge he was unable to respond to that charge in any manner in which he chose, he was denied an opportunity to be heard at least as to that charge. [19] That right also was federally guaranteed. [20]

The question presented to this court is whether subsequent proceedings in the state courts in any way mitigated or repaired the defects in the original order. Mr. Klein argues that even though the Appellate Division allowed him to serve an amended answer and ordered that hearings be conducted that the underlying order itself was never vacated, that that original order is the predicate of the federal disbarment, and that if the original order is defective the federal order must be vacated.

The court cannot accept Mr. Klein's position. The court does not believe that the Appellate Division's decision to allow an amended answer and to refer the matter for hearings was an empty act and not a good faith attempt to provide Mr. Klein with a full opportunity to meet the then clearly-defined charges against him. It would be a gross elevation of form over substance [21] to conclude at this juncture that the state proceeding was so lacking in notice and opportunity to be heard as to require that this court not give effect to the order of disbarment.

Mr. Klein's motion is denied. In deciding to give effect to the state court proceedings this court is not endorsing the

procedures employed by the state courts. All this court decides today is that the state proceedings were not so offensive to due process as to require this court to treat the state disbarment as a nullity.

s/ DNE

David N. Edelstein
Chief Judge

Dated: New York, N. Y.
Feb. 2, 1976

25a

FOOTNOTES

1 / Rule 5(d) provides:

> (d) Any member of the bar of this court who shall be disciplined by a court in any State, Territory, other District, Commonwealth or Possession, shall be disciplined to the same extent by this court unless an examination of the record resulting in such discipline discloses (1) that the procedure was so lacking in notice or opportunity to be hard as to constitute a deprivation of due process; or (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion on that subject; or (3) that the imposition of the same discipline by this court would result in grave injustice; or (4) that the misconduct established has been held by this court to warrant substantially different discipline.
>
> Upon the presentation to the court of a certified or exemplified copy of the order imposing such discipline, the respondent attorney so disciplined shall, by order of the court, be disciplined to the same extent by this court, provided, however, that within 30 days of the service upon the respondent attorney of the order of this court disciplining him, either the respondent attorney or a bar association designated by the chief judge in the order imposing discipline may apply to the chief judge for an order to show cause why the discipline imposed in this court should not be modified on the basis of one or more of the grounds set forth in this paragraph (d). . . .

Rules of the United States Courts for the Southern and Eastern Districts, New York, General Rule 5(d).

2 / Id.

3 / Id; Selling v. Radford, 243 U.S. 46 (1917); Theard v. United States, 354 U.S. 278 (1957).

4 / Mr. Klein accepted an invitation of the court to appear and address the grounds supporting his motion in open court.

5 / The petition alleges:

(a) Respondent's contumacious refusals to answer questions as a witness on January 23, 1964 and on January 24, 1964 at the Additional Special Term of the Supreme Court, Kings County, violated his inherent duty and obligation as a member of the legal profession and his duty to be candid and frank with the Court; and defied and flouted the authority of the Court to inquire into and elicit information within respondent's knowledge relating to respondent's charges and the charges of his clients Ursini of alleged misconduct and corruption upon the part of members of the Judiciary and members of the Bar, and relating to his conduct and practices as a lawyer. By his contumacious refusals to answer the aforesaid questions the respondent hindered and impeded the Judicial Inquiry directed by this Court into the charges made by respondent and his clients as aforesaid.

(b) That in addition to and wholly apart from respondent's contumacious refusals to testify, respondent wilfully and contumaciously obstructed and impeded the Additional Special Term by a course of conduct deliberately calculated to delay and mislead the Court sitting at such Additional Special Term, by his wilful failure to appear on November 21, 1963 as a witness under subpoena pursuant to the direction of the Justice presiding at such Additional Special Term, and by instructing his client, John R. Ursini, to refuse to testify as a witness when said John R. Ursini appeared before the Additional Special Term as a witness pursuant to subpoena.

(c) In an action in the Supreme Court, County of Queens, respondent deceived the Court and Lloyd's London, a third-party defendant therein, by preparing and serving a third-party summons and complaint

in the name of William Weintraub, as attorney of record for the third-party plaintiff, when in fact William Weintraub had not been retained by third-party plaintiff to prosecute its action and the use of his name as such attorney was without the knowledge or consent of the said William Weintraub.

(d) Respondent in or about October, 1961, solicited legal business of Harry L. Gilman and attempted to induce said Harry L. Gilman to discharge his attorneys in a pending action and to retain respondent in their stead.

(e) Respondent in or about October, 1960, solicited legal business for Robert S. Long, an attorney, and attempted to induce Seville Iron Works, Inc., a corporation, to retain Robert S. Long as their attorney, in the prosecution of an action.

(f) Respondent in or about October, 1961, when appearing for a party in pending litigation communicated upon the subject of the pending controversy with an adverse party to the litigation then represented by counsel without the knowledge or consent of the attorneys for said adverse party.

(g) Prior to March, 1964, respondent had been retained as attorney for Fun Fair Park, Inc. In the period between March 8 and March 18, 1964, respondent aided in the preparation and filing of a petition by creditors in an involuntary bankruptcy proceeding in the District Court of the United States, Eastern District of New York, entitled "In the Matter of Fun Fair Park, Inc., Alleged Bankrupt," and further aided the petitioning creditors in the prosecution of the bankruptcy proceeding by rendering to them legal advice, and by preparing and delivering to such creditors legal papers which were executed and filed by them with the Clerk of said District Court. Following the aforesaid conduct by respondent, he thereafter appeared as attorney for the alleged bankrupt, and filed an answer to the petition of the creditors, denying certain allegations thereof based upon information furnished by him.

6 / 23 A.D.2d 356, 262 N.Y.S.2d 416 (1965).

7 / Id. at 360, 262 N.Y.S.2d at 420.

8 / In the Matter of William Robert Klein, Order of Disbarment (June 29, 1965) at 2 (emphasis added).

9 / Affidavit of William Robert Klein ¶ 19 at 5 (July 30, 1965).

10 / 24 A.D.2d 726 (1965), appeal dismissed, 17 N.Y.2d 729, 216 N.E.2d 840, 269 N.Y.S.2d 978 (1966).

11 / 18 N.Y.2d 598, 219 N.E.2d 194, 272 N.Y.S.2d 372 (1966), motion for reargument denied, 25 N.Y.2d 735 (1969), motion to amend remittitur granted, 26 N.Y.2d 961, 259 N.E.2d 476, 311 N.Y.S.2d 4 (1970).

12 / Id. at 600, 219 N.E.2d at 194, 272 N.Y.S.2d at 373.

13 / Id. at 600-01, 219 N.E.2d at 194-95, 272 N.Y.S.2d at 373.

14 / 385 U.S. 973 (1966), petition for rehearing denied, 385 U.S. 1032, motion for leave to file second petition for rehearing denied, 388 U.S. 925 (1967).

15 / Tr. of October 17, 1966 at 99-100.

16 / The referee found the evidence supported part of charge (a) and charges (c), (f), and (g).

17 / Mr. Klein also claims that (1) the judgment of disbarment is defective in form; (2) that a report filed in the United States District Court for the Eastern District of New York by the United States Attorney resulted in the dismissal of an action seeking his federal disbarment on the basis of his state disbarment; and (3) that when the underlying charges were reduced in number from eight to three and one-half the order was never reversed and the discipline never reconsidered by the Appellate Division.

Mr. Klein's first additional claim is apparently without merit and is in any event not an appropriate ground under Rule 5(d). His second claim is both inappropriate under 5(d) and misleading. The proceeding for federal disbarmentwas dismissed by Judge Dooling without prejudice after the United States Attorney withdrew from the case. Judge Dooling's opinion of June 25, 1969 stated that the "prima facie validity of the state disbarment and the utter and manifest unsoundness of the . . . due process and other procedural contentions would make any other course incompatible with the interests of justice." In the Matter of the Application to Discipline William Robert Klein, 65 M 811. Mr. Klein's remaining claim is neither appropriate nor persuasive. He argues that the practice in New York when less than all of the underlying charges of a disbarment order are found by the Court of Appeals to be unsustainable is to reverse the judgment and remand the case to the Appellate Division for a reconsideration of appropriate discipline. When the Appellate Division confirmed the referee's report and dismissed several of the charges contained in the petition Mr. Klein was entitled, he argues, at that point to a reconsideration of the appropriate discipline.

Because the case was before the Appellate Division upon the motion to confirm remand was neither possible nor necessary. Regarding whether or not that court reconsidered its earlier determination upon the motion to confirm since it dismissed several charges of the original petition, confirmed others, and at the same time adjudicated Mr. Klein's motion to vacate, this court can confidently assume that the Appellate Division did consider whether to modify Mr. Klein's discipline and determined that disbarment was appropriate.

18 / In re Ruffalo, 390 U.S. 544 (1968). See also N.Y. Jud. Law § 90 ¶ 6 (McKinney 1968).

19 / It would appear that Mr. Klein did have an opportunity to be heard as to the charges stated in the petition but that his failure to deny any of the allegations constituted an admission of their truth under state law. See, e.g., In re Severino, 28 A.D.2d 547, 280 N.Y.S.2d 221 (1967). In any event, all of the charges were contestable in the hearings before the referee.

20 / Selling v. Radford, 243 U.S. 46 (1917). See also N.Y. Jud. Law § 90 ¶ 6 (McKinney 1968).

21 / Mr. Klein's only claim of prejudice is that the order of disbarment cast a cloud upon his credibility in the hearings before the referee. This court has no basis for concluding that the referee, an experienced member of the Bench, would have treated the evidence presented to him differently than he would have had the reference been made after a vacation of the order.

Exh B on appeal

AND MEMORANDUM mailed and ECF'd 2/22/76

NOTICE OF MOTION AND AFFIDAVIT AND MEMORANDUM,

A-7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN
etc.,

M2-238

An Attorney

TO THE CHIEF JUDGE OF THIS COURT:

The Undersigned applicant for relief herein under this Court's Rule 5 d, upon his affidavit sworn to the 20 day of February 1976, the Opinion of the Chief Judge, filed February 2, 1976 # 43,821, and the papers and proceedings heretofore had herein, hereby respectfully requests and demands, a sworn oral hearing with respect to the available evidence on hand to establish, that the records, proceedings and procedures of the State Court which resulted in the subject judgment of discipline, to wit, the state court's disbarment, were so far fundamentally lacking :

(1) lacking in notice and opportunity to be heard as to constitute a deprivation of due process;

(2) subject to such an infirmity of proof, establishing the misconduct, as to give rise to the clear conviction that this Court could not consistently with its duty accept as final the conclusion of the State Court on that subject;

(3) that the imposition of the same discipline by this Court would result in grave injustice; and

(4) that the misconduct established, if any, has been held by this Court to warrant substantially different discipline;

and for such other and further relief as may be fitting herein now :

Dated , New York, February 20, 1976

WILLIAM R. KLEIN, pro se
118-21 Queens Blvd.
Forest Hills, N.Y. 11375
268-6320

Index #7

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN M2-238
etc.,

An Attorney

County of New York: SS::
State of New York :

WILLIAM R.KLEIN, being duly sworn,deposes and says:

I am the applicant herein, above-named.

On February 18,1976, I read the Opinion of the Chief Judge herein,filed February 2,1976 ,No.43821;and by reason of both its content and omissions,am constrained to file this Request for a full hearing,under oath,as set forth in the Annexed Request and Demand, as matter of right and in the interest of justice.

It is not necessary to repeat the elements of Court Rule 5 d and its essential provisions for an attorney's Federal membership protections against basic state court disciplining excesses.

The Chief Judge's Opinion concludes with this statement:

> "All this Court decides today is that the state proceedings were not so offensive to due process as to require this court to treat the state disbarment as a nullity."

In same connection,the Chief Judge stated

> "## this court is not endorsing the procedures employed by the state courts."

The Opinion must be of course read in conjunction with

its numerous footnotes;which in turn,threw considerable further light upon its Content and Omissions, thus reenforcing the need of a complementing sworn oral hearing, it is respectfully noted.

We here quote,seriatim, excerpts from the Opinion(and footnotes) which have prompted this Demand in respect of their manifestation of the inadequacy of the informal hearing granted January 16, 1976 to this applicant, and of the ex parte "court has examined the entire record of the state court proceedings " (p.1)

Excerpt #1: (p.1)

> "The issue presented to the court by Mr.Klein's motion is a narrow one:

This statement seems an adoption in haec verbis of my concluding statement in my Memorandum on file; and thereupon follows a broad pursuit of many matters ,far beyond the scope of treatment of the Order of cancellation made by the Chief Judge, which was the sole predicate of its ex parte issuance on September 25,1974. The sole predicate was the recited judgment of disbarment of the State court, entered June 29,1965, upon which alone Judge Edelstein acted 9 years later.

Excerpt #2: (p.1)

> "The Court has examined the entire record of the State Court proceedings and has considered the arguments presented by Mr.Klein in his papers and in open Court."

In the very next paragraph,(p2),the opinion fixes the state court proceedings as having "commenced on December 16,1964" The fact is that the disciplinary proceedings began on October 1e,1963 and then followed a basic process, which first constituted the denial of due process, and from which stemmed the more incidental "petition and

and order to show cause."

The Opinion shows no references to these proceedings, although they were part of the fact recital on the informal oral hearing, and which appear reflected in the applicant's Memorandum ,at p.3, and 4-5 mailed to Chambers the very next day. The nature of the proceedings as"retaliatory"in producing the decree of disbarment by surprise, in the mails July 1st,1965,and accounting for its facial voidness, thus, has received no treatment in the Opinion or the footnotes, and I submit, goes essentially to the issue of due process.

Excerpt # 3:(p.2):

> "Mr.Klein responded by papers "answering..and in bar" of the proceeding,which raised various legal arguments but which did not deny any of the acts of misconduct alleged in the petition."

That "answer " consisted of some 11 grounds,denying that any of the allegations had any force in law,even assuming their truth,or fact; and was, it is submitted,a complete denial of the facts;and particularly, 3 of the denials was in form of affirmative defenses, as the United States Attorney for the Eastern District reported to his Chief Judge, and which therefore required a trial , in any event. In that respect, he differed with the stolid maintenance by both the Appellate Division and Ct. of Appeals,as a Federal official,protecting constitutional guaranties, as a member of the Department of Justice, that I had"failed to deny"any of the allegations of that"Petition".(.2)

In any event, it is elementary due process, that after a respondent has made objections to a Petition,upon denial of such a state motion, the respondent is always given 10 days to file an Answer(CPLR). Issue is not to be raised until disposition of such motion,for trial thereon.No reference to this is made in the Opinion,and evidence

of the content actual of that 11-ground paper in bar, can now be produced upon a full sworn hearing.

Excerpt # 4(p.5) (after recital of violated guaranties(p.5)

> "The question presented to this Courtis whether subsequent proceedings in the state courts in any way mitigated or repaired the defects in the original order".

This Chief Judge disbarred upon the order of June 29,1965 in 1974. That judgment is admittedly constitutionally deficient now./(p.5). I shall testify upon any hearing to be had that the state Courts, following the direction of the United States Supreme Court, have prescribed a procedure for such correction of a such defective judgment. I shall testify that both the Court of Appeals and the Appellate Division here, abided by this direction and mandate of the United States Supreme Court ~~mandate~~ , in other cases, but have denied to this applicant, the equal protection of the prevailing state laws, in disregard of federal and state constitutions.

The position of the state judgment as a foundation for further proceedings, itself void, both procedurally and on its face, was denounced by the U.S.Attorney for the Eastern District in his Report to his Chief Judge of September 9,1968, as providing no more validity to any future proceedings, than it has per se, and that everything resting on it, must fall with it.

In this connection Footnote 17, at p.iv, is called to attention.

> "Mr.Klein also claims that(1) the judgment of disbarment is defective in form;"

Nowhere have I objected to the judgment as defective in form, but have shown that the judgment lacks essential recitals, required of a valid judgment, as defined by the CPLR of the State; and I shall,

36a

upon due hearing under oath, attest that the judgment is thus deficient in substance, corresponding to the lack of due-process steps in its production in 1965-- a surprise product forwarded by mail, while applicant as respondent was waiting for denial or grant of his motion to dismiss the petition, with normal leave to answer upon denial thereof. To all this, I shall testify, upon hearing.

Rule 5 d is in extense on p.1 of the Footnotes. Only one of the four exception protections therein recited, have been treated in the Opinion. That is "(1)".

The Chief Judge in Opinion has not considered the prevailing relevant force of "(2)", dealing with "infirmity of proof". While the Opinion's Footnote 5 recites the charges of the Petition, nowhere has BEEN treatment of the utter absence of proof, as we claim (demonstrated already before the Court of Appeals in our Main Brief filed there in 1966) to support any of the charges; in our Memorandum filed here, we pointed out that these charges were pure "makeweight trivia" (p.3) to replace the one main charge, which the retaliatory prosecution missed; (i.e., the Appellate Division, 2nd Dept., on whose Bench throughout sat the member Justice of the Supreme Court, who "commanded" the prosecution while himself under fire. That part of the record remains to be sworn, and has not been treated. A shielding process prevailed in the State Courts, and this applicant was the effective victim. The following IS

Excerpt No. 6 (p.5) :

> "The Court does not believe that the Appellate Division's decision to allow an amended answer and to refer the matter for hearings was an empty act and NOT A GOOD FAITH ATTEMPT to provide Mr. Klein with a full opportunity to meet the then clearly defined charges against him. It would be a gross elevation of form over substance to conclude AT THIS JUNCTURE...."

37a

The bad faith of the entire proceadings in the State Courts, bearing in mind the genesis of the charge-process, will be developed by testimony, in the Federal Court, where constitutional protections are the sole issue, to be presented by applicant, with leave of the Chief Judge. This will be the first time, that evidence will be orally adduced under the protective aegis of a federal Court.

Provisions (3) and (4) of the exceptions of Rule 5 (d) have not, either, been treated by the Chief Judge, and both are relevant in applicant's endeavor to vacate this disbarment order made herein by the Chief Judge .

It is true, that, because we believed that the issue was a "narrow" one, and we were confining our attack, as for first instance, to the most immediate, visible voidnesses: of the judgment itself and the absence, of essential notice and hearings on any charge "BEFORE" any discipline may be adjudged, or attach (Jud. Law Sec. 90, N.Y.S.) we had emphasised the exception No. (1). That "BEFORENESS" is indispensable to due process (See e.g. N.Y.L.J., USDC-SDNY, front page 1-16-76 Vail v. Quinlan, .. "if a hearing is to serve its full purpose, .. before, NOT after" .." We believe now that, as the first 3 1/2 charges were dismissed of their own inherent lack, so will the others dissipate into thin air, when given impartial hearing, on their face--even as we maintained, by motion to dismiss, in response to the Petition of December 16. 1964, in or about February 1965.

We are not here seeking reargument, nor pointing out what we believe to be errors in remaining parts of Footnote 17. At the proper time, upon hearing, the truth in such respects will be attested to, in complete clarification, we believe. We particularly also refer to the "remand" subject of its last paragraph; and the Chief Judge's "confident

assumption"("can confidently assume") , we believe , will take flight upon testimony on the record, being adduced.

Nor may I now treat with the case of "Re Severino" in Footnote 19, a product of the same Appellate Division; wherein ,as deponent understands, an exception was made to the universal rule on disciplinary cases in the state,that though an attorney under charges fails to respond, whether to Grievance Committee or to the Court or its Referee, the charges must be heard out on sworn testimony,and must be sufficiently proven, before any discipline may be meted out , as the state's, long established,due process for disciplinary cases.

Nor is it now necessary to treat with a further presumption of the Chief Judge in Footnote 21. On the hearing of January 16, this applicant had assumed that his unsworn presentation would be accepted at face value as true,else he would at once have requested sworn hearing.

WHEREFORE applicant prays for a sworn hearing on all issues as they are herein raised under Rule 5 d , heretofore not treated under oath,with object and purpose to vacate and set aside the ex parte order of the Chief Judge of September 24,1975 on file herein.

Sworn to before me this
20 day of February,1976

STUART B. CASSELL
Notary Public, State of New York
No. 30-5645573
Qualified in Nassau County
Commission Expires March 30, 1976

William R.Klein

In the Matter of

WILLIAM ROBERT KLEIN
etc.,

M-2-238

An Attorney

MEMORANDUM IN CONJUNCTION WITH APPLICANT'S DEMAND FOR A SWORN HEARING OF THE MATTERS (1)(2)(3) and (4) SO ENUMERATED IN COURT RULE 5 d

In the light of what must be viewed as the Chief Judge's tentative, and invitatory, Opinion, No. 43,821, - leaving still untreated & in depth, three of the four exceptive items of the Rule, and only surface-wise, the first of the four-, in relation to the procedures employed by the state courts, to produce the subject judgment of state disbarment on June 29, 1965 upon which alone, the Chief Judge as recited, cancelled this Federal Bar membership, by his Order of September 25, 1974), request is being made for a fully informative, unhearsayed, sworn hearing, as matter of right and in interest of justice; a man's professional liberty being at stake.

This opportunity is particularly necessary in the light of Chief Judge Edelstein own refusal to endorse the procedures employed by the State Courts (p. 5-6). It becomes the more necessary because of the Opinion's footnotes' instances of inadequacy, or misstatement of this applicant's legal and factual positions, both herein and in the State Court proceedings (e.g., footnotes 21, 19, 17, latter part).

We are suggesting the before, a set of new procedures, to fulfill the due-process guaranties of Court Rule 5d , since the Chief Judge,-in accord with applicant,on the "narrowness"of the issues incident to the application for the cancellation of his ex-parte , solely predicated Order of September 25,1974- has nonetheless seen fit to widen out into the fields of Items 2,3,and 4 of the Rule.

We do so, without prejudice intended to our"narrowness" claim, with due recognition of the salient concessions of the Opinion.

(a) We desire to produce the evidence of the state proceedings had,prior to"December 16,1964,"(Op.p/2),which, we contend, will shed entirely new light on the Constitutional excesses,and discarded Constitutional safeguards,that preceded and followed the launching of that noticeless Petition,as now emphatically found by the Chief Judge(pp.2,3, and 5)

(b) We desire to show the "retaliatory" forces which continued at work against this applicant--target, from 1964,continuously to maintain the disbarment, at all costs;all of which absented itself from the 12-page Opinion and footnotes. We have,only, doubts,that, upon the production of that evidence before the Chief Judge, that his statements of presumption,and confidence of assumption, in favor of the acts and steps taken by the state courts,will survive. (E.g., footnote 21,17(latter part); p.5,Op. as to "good faith").

The foregoing may be elaborated into sections of proofs, which can be,in orderly manner, produced before the Chief Judge. At this time, it is unnecessary, we believe,to further expand the items of the evidence,-extending, materially, till 1973, in demonstration of due-process denials.

Dated February 26,1976

Respectfully submitted,

W. C. Conrad Pleasant

Applicant pro se.

41a

Exh 8 offered

ATTORNEYS RIEMCRANDUM

LETTER

A-81

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.,
Forest Hills N Y
11375 268-6320

March 5,1976

Hon.David N.Edelstein
Chief Judge,U.S.D.C.
Foley Square, N.Y.

Re: M2-238
William R.Klein,
an Attorney

Honored Sir:

As matter of duty to the Court and Your Honor, I am constrained to hereby supplement my recent application for a full sworn hearing, with arisal of possibility,now, of avoiding the need and labors ofsuch hearing.

Your Opinion of February 2, 1976, I am frank to say,took an unexpected turn,and I was unprepared for it.

On the informal hearing of January 16,I made a passing related reference to the front-page case of the New York Law Journal of that day(Vale v.Quinlan,of your Court); but little did I anticipate, that the line of U.S.Supreme Court cases, introduced by that Opinion's footnotes, could become central to these issues, as treated by your Opinion.

Your Honor's Opinion at p.5,after broadly acknowledging that the judgment of June 29,1965 constituted denial of two specific federal guaranties,proceeds :

> "The question presented to this Court is whether subsequent proceedings in the state Courts in any way mitigated or repaired the defects in the original order. Mr.Klein argues that even though the Appellate Division allowed him to serve an amended answer and ordered that hearings be conducted,that the underlying order itself was never vacated, that that original order is the predicate of the federal disbarment,and that if the original order id defective, the federal order must be vacated.
>
> "The court cannot accept Mr.Klein's position...."

With due appreciation that Your Honor's foregoing acknowledgement of the disregard of federal guaranties, is the first from any Court in 11 years, and that Your Honor has also declined to"endorse" the"procedures"used in"the State Courts"(p.5), the U.S.Attorney's Report to the Chief Judge, made upon his direction in 1965,and by him duly filed there,

in the U.S.District Court of the Eastern District,should receive its due weight(dated September 9,1968).It was those specific violations,which were urged in 1965 et seq., among others, including the profound bias of the Appellate Division as then asserted,also.

Thus apart from all other grounds,our retroactive claims and the"sole predicate"nature of your Chief Judge's order in ex parte cancellation of Bar membership here, should merit special attention.

However, our present purpose is to deliver the research results of those footnote cases, being recent and of the highest authority.The footnoted case is Fuentes v.Shevin 407 U.S.67(1972), citing the whole history of due process.

Only on March 1st,1976, the United States Supreme Court, agreed to review, on certiorari,certain obscenity convictions,on the pointed claim of appellants,that the Court below could not shirk its own"independent" obligation to examine the evidence, as previously held by the Supreme Court, in 1962 and 1964 cases before them, in these words:

> "Such an abnegation of judicial supervision in this field would be inconsistent with our duty to uphold the constitutional guaranties."

(Report in New York Times March 2,1976)

We shall excerpt relevant portions of the Fuentes opinion, and also of the Opinion of Armstrong v.Manzo,380 US 545 which,we submit, must be considered as demolishing all concepts of post-judgment repair, cure,or mitigation, once it has been established that the federal guaranties have been ignored,violated,postponed in operation or protection; and that,denial is to be avoided,whether in respect to the menial commercial item of a washing-machine,or a man's liberty,physical or professional. The whole concept of protection,of the 14th and Fifth Amendments,BEFORE , not after,the transaction in question, has been left in no doubt any longer :

At p.80, Fuentes:

> "For more than a century,the central meaning of due process has been clear:'Parties whose rights are to be affected are entitled to be heard,and in order that they enjoy that right, they must be notified(citing cases).It is equally fundamental that the right to notice and an opportunity to be heard MUST BE GRANTED AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER. Armstrong v.Manzo,380 US 545,58.

And the"issue" is fixed at whether"BEFORE the state authorises its agents to seize..."

(In the instant case,not only was notice lacking,but literally the OPPORTUNITY to answer to the charges, noticed, was choked off, when the legal time for answering on the merits to the complaint , arrived. The Appellate Division,on the same date and day,that it dismissed respondent's motion to dismiss the complaint,granted the judgment in disbarment, omitting the universal right of the state's Civil Practise Law and Rules, to serve an answer , within 10 days after that denial(3211(f) and 404 CPLR)(also Sec.90(6) Jud.Law, also cited by Chief Judge Opinion-footnote #18)

The Fuentes opinion proceeds:

> "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making,when it acts to deprive a person of his possessions. The purpose of the requirement is not only to ensure abstract fair play to the individual.Its purpose,more particularly, is to protect his use and possession of property from arbitrary encroachment,--to minimize substantively unfair or mistaken deprivations of property... So viewed, the prohibition against the deprivation of of property without due process of law REFLECTS THE HIGH VALUES EMBEDDED IN OUR CONSTITUTIONAL AND POLITICAL HISTORY, THAT WE PLACE ON A PERSON'S RIGHT TO ENJOY WHAT IS HIS,FREE OF GOVERNMENTAL INTERFERENCE.(citing cases) (emphasis mine)
>
> "If the right to notice and a hearing is to serve its full purpose,then it is clear that it must be granted AT A TIME WHEN THE DEPRIVATION CAN STILL BE PREVENTED.At a leter hearing, an individual's possessions can be returned to him, if they were unfairly or mistakenly taken in the first place.Damages may even be awarded to him, for the wrongful deprivation. BUT NO LATER HEARING AND NO DAMAGES AWARD CAN UNDO the fact that the arbitrary taking that was subject to the right of procedural due process HAS ALREADY OCCURRED. "This Court HAS NOT EMBRACED THE GENERAL PROPOSITION THAT A WRONG MAY BE DONE, IF IT CAN BE UNDONE.(Stanley v.Illinois,405 US 645,7)... OPPORTUNITY FOR THAT HEARING MUST BE PROVIDED BEFORE THAT DEPRIVATION TAKES PLACE(citing cases),(citing the disciplinary case of Re Ruffalo,390 US 544)(emphasis added)

At p.85:

> "It is now well settled that a temporary,non-final deprivation is NONETHELESS a "deprivation"in the terms of the 14th Amendment.(Sniadack v. Family Finance Corp.395 US 337. (Referring to the Ruffalo case ante,pertinently,Justice Douglas therein emphasized:
>
> > " As noted, the charge(no.13) for which he stands disbarred was not in the original charges made against him."

In fact, that judgment,as it stands,is obsolete in some 4 respects.

Excerpts from the Armstrong v.Manzo Opinion of the U.S.Supreme Court, follow: (380 US 545 :

> "We granted certiorari(379 US 816).The question before us,whether failure to notify the petitioner of the pendency of the adoption proceedings,deprived him of due processof law, so as to render the adoption decree constitutionally invalid;and if so, WHETHER THE SUBSEQUENT HEARING ON THE PETITIONER'S MOTION TO SET ASIDE THE DECREE served to cure its constitutional invalidity.

(This is precisely the motion made by us in the Appellate Division,promptly upon entry of the decree of disbarment, on surprise discovery thereof(p.3 Opinion)

> "... There can be no question that at a minimum they require that deprivation of life,liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. Mullane v.Central Hanover Tr.Co. 339 US 306,13)
>
> " An elementary and fundamental requirement of due process in any proceeding WHICH IS TO BE ACCORDED FINALITY, is notice, reasonably to apprise .. and afford opportunity to present their objections (Milliken v.Meyer 311 US 457, et al.)

(In our disciplinary case, objections were first filed,"in bar"(p.2) some 11 in number, which,with their denial and dismissal, on June 29,1965, should have been followed by opportunity to answer by way of denials and affirmative defenses, if any)

> "The State of Texas Civil Court of Appeals held with Texas precedents that whatever constitutional infirmity resulted from the failure to give the petitioner notice HAD BEEN CURED by the hearing subsequently afforded to him UPON HIS MOTION TO SET ASIDE THE DECREE.371 SW(2)412. WE CANNOT AGREE.
>
> "Had the petitioner been given that timely notice which the Constitution requires, the Manzos,as the moving parties,would have had the burden of proving their case as against whatever defenses the petitioners might have interposed.(See Jones v.Willson,285 SW(2) 877 et ano.) ******
>
> " Instead the petitioner was faced on his first appearance in the courtroom with the TASK of overcoming an adverse decree,entered by one judge, based upon a finding of non-support made by another judge... The burdens thus placed upon the petitioner were real,not purely theoretical.For

"it is plain that WHERE THE BURDEN OF PROOF LIES MAY BE the DECISION OF THE OUTCOME. Speiser v. Randall 357 US 513,25. Yet these burdens would not have been imposed upon him, had he been put in timely notice in accordance with the Constitution." (This depicts precisely our own experience)

And at p.552, Armstrong case:

" A fundamental requirement of due process is the 'opportunity to be heard! Granus v. Ordeau, 234 US 385,94. IT IS AN OPPORTUNITY WHICH MUST BE GRANTED AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER. The trial court could have fully accorded this right to the petitioner ONLY BY GRANTING HIS MOTION TO SET ASIDE THE DECREE, AND CONSIDER THIS CASE ANEW. ONLY THAT WOULD HAVE WIPED THE SLATE CLEAN. ONLY THAT WOULD HAVE RESTORED THE PETITIONER TO THEPOSITION HE WOULD HAVE OCCUPIED HAD DUE PROCESS BEEN ACCORDED HIM IN THE FIRST PLACE. HIS MOTION SHOULD HAVE BEEN GRANTED

In Desmond v. Rachey, 315 F.Supp. 328, (one of the footnoted cases of the NYLL of January 16, cited by the 3-man Constitutional court in Vale v. Quinlan (SDNY), the following succinct exceppt is included: (at p.332)

" Due process normally requires a hearing and opportunity to present a defense BEFORE incarceration and the fact thatthere is a SUBSEQUENT procedureby which the debtor may obtain his release DOES NOT CHANGE THE RESULT."

We think that what the United States Supreme Court said in the case of Berger v. U.S, 255 US 22, concerning the incurable prejudice suffered by one, who is denied due process (in that case a biassed court that should have ceased to further function) is most a propos: (Bias is element in our case also.)

" To commit to a Judge a decision upon the truth of the factsgives chance for the evil against which the section is directed. The remedy by appeal is inadequate. It comes after the trial, and if prejudice exists, ithas worked its evil and a judgment of it in a reviewing tribunal is PRECARIOUS. It goes there FORTIFIED BY PRESUMPTIONS... "

The Chief Judge's Opinion will be seen to include such presumptions in favor of the state court proceedings at crucial points. (See lower p.5, and p.6; quote from Judge Dooling at p.v (footnotes #17; confidence expressed p.v, middle par; footnote 19; ftnote 21)

C O N C L U S I O N

It cannot be denied that the art of the Chief Judge's Opinion is to severely criticise the state court decree's constitutional deficiencies, and thereupon to furnish cure, which does not lie.

Respectfully,

WILLIAM R. KLEIN pro se.

k/b

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CHIEF JUDGE'S
MEMORANDUM-ENDORSEMENT
UNDER APPEAL

A-9

MEMO ENDORSE
ENDORSEMENT

U S DISTRICT COURT
FILED
MAR 19, 1976

IN THE MATTER of William Robert Klein

On February [illegible] of his federal disbarment was denied [illegible] dated February 20 and 26, 1976, Mr. Klein has moved this court for a "sworn oral hearing with respect to the available evidence on hand" to establish certain claims under General Rule 5(d) of the rules of this court. By letter dated March 5, 1976, Mr. Klein supplemented that application by calling to the court's attention certain decisions of the United States Supreme Court.

Although Mr. Klein denies that his application is for reargument, Affidavit of February 20, 1976 at 6, since Mr. Klein has no matter pending before this court to which his application for a hearing can be related, the court will construe his submissions as a motion for reargument of the opinion of February 2. The court does not envision any other manner of considering these submissions which would result in a different outcome.

The court has considered Mr. Klein's contentions even though as a motion for reargument his application is untimely. General Rule 9(m). His motion seeks a hearing for the giving of testimony regarding (1) grounds under Rule 5(d) not previously raised; (2) particular matters allegedly omitted or misrepresented in the court's opinion; and (3) the retaliatory nature of the state proceedings within the context of the Rule 5(d) ground previously raised. Apart from his frivolous assertion that this court's opinion was "invitatory" of further argument, Mr. Klein does not provide the court with a justification for waiting until this time to assert the grounds not previously raised. Nor does he indicate to which facts he would testify if given the opportunity to do so. The various particular matters which Mr. Klein asserts were either omitted from or improperly represented in the court's opinion and to which he would at this late date offer testimony are immaterial, clearly contradicted by the state record, or questions of law to which the presentation of testimony would be purposeless. Finally, Mr. Klein's assertions that the state proceedings were retaliatory and that he should be allowed to so testify are, like his prior assertions, mere conclusory allegations without support in the record and insufficient to support a judicial finding or to warrant a further hearing. Layman v. Tollett, 357 F.Supp. 910, 916 (E.D. Tenn. 1972), aff'd , 473 F.2d 912 (6th Cir. 1973).

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The judicial decisions to which Mr. Klein refers the court's attention do not preclude the rationale of the February 2 opinion. In fact, Armstrong v. Manzo, 380 U.S. 545 (1965), by inquiring into the actual impact of the timing of the hearing and not resting upon the timing of the hearing alone, supports that rationale. See also Huntley v. North Carolina State Board of Education, 493 F.2d 1016 (4th Cir. 1974) (applying the Armstrong analysis). Unlike the Armstrong case, in which the burden of proof of a fact material to the order was shifted to the petitioner which would not have been upon him had he received timely notice and hearing, there is in the instant case no suggestion or basis in the state record for the court concluding that at the hearing before the referee the burden of proof of facts had been shifted to Mr. Klein. That in both Armstrong and the case at hand the petitioner was required to move to vacate the prior order does not mean that in both cases the burden of proof of facts material to the order had been shifted.

In sum, upon reargument of Mr. Klein's motion to vacate his order of federal disbarment, the court is not persuaded to alter its prior disposition and reaffirms its denial of that motion.

So ordered.

David N. Edelstein
Chief Judge

Dated: New York, New York
March 19 1976

U S DISTRICT COURT
FILED
MAR 19, 1976

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MICROFILM
MAR 19, 1976

Letter to Ch. Judge A-10

WILLIAM R. KLEIN
118-21 Queens Blvd.,
Forest Hills, N.Y.
11375

268-6320

October 2,1974

Hon.David N. Edelstein
Chief Judge, U.S.D.C.
Southern District,N.Y.
Foley Square, N.Y.C.

Honored Sir:

Immediately upon learning indirectly,that Your Honor, in routine performance under Rule 5 of the Court, had signed an Order of Disbarment,dated as I understand, September 25, 1974, I called the Court, spoke at Chambers to Mr.Goldstein because of the unusual character of the situation, thereby presented.

I am informed th at the Court acted upon an Aug ust 13,1974 communication addressed to the Clerk of the Court,to which was attached an exemplified copy of the certain judgment of disbarment, dated June 29,1965. That August 13 letter had,in duplicate,also been sent to the Clerk of the Eastern District , requesting the Clerk to act thereon in his Court.

That letter was filed in the case of"U.S. vs. William R. Klein" which had been instituted in or about the latter part of August 1965 (65 M 811) by Order to Show cause and Petition of the U.S.Attorney (Hon.Joseph P.Hoey,Vincent T.Mc Carthy, Chief Asst.), with nothing further done thereon,obviously because in that matter,the Petition was dismissed , after report made by the U.S.Attorney on the entire matter,filed September 9,1968. That report found that the judgment was as we claimed, a constitutional nullity, for lack of essential notice and absence of hearings on any charges. We also showed that the judgment, on its face, correspondingly, was void, in lacking essential recitals, as required by Section 5011 of the CPLR of the State of New York.

All this was fully known already to the Appellate Division, 2nd Dept., which had then in 1965, pressed for Federal disbarment action, and we submit, the State Court then also knew that the respondent had been fully reinstated by the order of the Eastern District Judge,which terminated the temporary suspension order,routinely included in the original Order to Show Cause of the Chief Judge, Hon. Joseph Zavatt.

It is submitted that no service having yet been made presently, under the circumstances, Your Honor's order may in justice be recalled or revoked.

Respectfully submitted

William R.Klein

k/t.

Docket #10

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Letter to CK Judge

A-11

William R.Klein
Room 510, 110-21
Queens Blvd.
Forest Hills,N.Y.
268-6320
Zip No.11375

October 15,1974

Hon.David N.Edelstein,
Chief Judge,U.S.D.C.,(ED)
Foley Square,N.Y.

Re:Automatic Order of Disbarment
Dated September 25,1974

Dear Sir:

I understand from the Law Clerk,that you have been absent,out-of-town,and that accordingly my letter of October 2 inst.,had to await your attention on return.

I think it helpful in the interim,and because time for correction,if proper,is of the essence,that the following data be supplied to your Chanbers.The gist thereof is,that Federal disbarment,in any event,is not automatic,upon proof of State disbarment,though the federal membership hinges,in the first instance, upon State admission.

In the 3rd paragraph of my October 2 letter,reference is made to the "report made by the U.S.Attorney... filed September 9,1968". (65 M 811,file U.S.D.C.(E.D.))

At p.23 thereof,the U.S.Attorney cites and quotes In Re Theard,354 US 278 (1957) in support, and others,prior and subsequent,at pp.24 and 25.

On the basis of that report,with its finding and conclusion that the judgment,on its face,failed to recite essentials of due process,and had correspondingly not been preceded by essential notice or hearings had on any charge,the Court then apparently felt free,to order lifting of suspension,part of the original order to show cause;which itself contradicted the "automatic" procedure.Of all this,your informant,the Clerk of the Appellate Division (2nd Dept.) officially knew,when he sent out the August 13th,1974 letter to your Court.

I have asked for revocation of the "automatic" order of Your Honor in this light;and if Your Honor desires, I shall be glad to appear before you for any questions.

Respectfully

William R.KLein

k.t

50a

Index #11

Letter to Ch. Judge A-12

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.
Forest Hills, NYC
11375

Phone 268-6320

October 21, 1974

Hon. David N. Edelstein,
Chief Judge, U.S.D.C.
Foley Square, N. Y.

Dear Judge:

I am enclosing a proposed ex parte Order, providing for the revocation of the Order of Disbarment of September 25, 1974, as the formal submission in keeping with my prior two letters, addressed to Your Honor, as the Chief Judge. These two letters are incorporated by reference in the affidavit annexed thereto.

It seems to this writer that this proposal appropriately deals with the omission of the original applicant to disclose the prior history, including this attorney's reinstatement in the Federal Court in the Eastern District after rejection by the U.S. Attorney's office of that original Judgment of disbarment, for lack of notice and hearings on any charge.

For, certainly, it is to be assumed that Your Honor as Chief Judge, under Rule 5, with fitting disclosure before him, would not have issued an 'automatic' disbarment Order, apart from the rule against such under Supreme Court edict, in any event.

Respectfully submitted,

William R. Klein

k.t

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Letter to Ch. Judge

A-13

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.,
Forest Hills, NYC
11375

268-6320

October 25,1974

Hon.David N.Edelson,
Chief Judge, U.S.D.C.
Southern District N.Y.
Foley Square, N.Y.

Re:Automatic Disbarment

Dear Judge:

I am hereby making application to be heard in support of my proposed ex parte Order in revocation of the automatic order of disbarment,issued by the Chief Judge dated September 25,1974.

Your Law Assistant suggested that whatever application I have,should not be made by telephone. I have familiarised myself with the controlling Rule 5 of the Court Rules.

I suggest again that time is of the essence, as Your Honor may well understand.

Respectfully yours,

William R.Klein

k/t

Draft 13

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— Letter from Ch. Judge to Appellant A-14

(14)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

CHAMBERS OF
DAVID N. EDELSTEIN
CHIEF JUDGE

November 4, 1974

Mr. William R. Klein
c/o Ralph F. Clements, Jr.
118-21 Queens Boulevard, Rm. 510
Forest Hills, N. Y. 11375

Re: In the Matter of William Robert Klein a/k/a
William R. Klein, an Attorney (M-2-238)

Dear Mr. Klein:

Chief Judge Edelstein has instructed me to reiterate to you, in writing, the substance of the message which I gave to you during our telephone conversation on October 25, 1974. To that effect, once again I would like to draw your attention to Rule 5(d) of the General Rules of the United States District Court for the Southern District of New York. That provision, upon which Chief Judge Edelstein based the Order signed on September 25, 1974, provides a procedure by which you may apply to Chief Judge Edelstein "for an order to show cause why the discipline imposed by this court should not be modified on the basis of one or more of the grounds set forth in ... Paragraph d." Of course, reference also must be made to the time limit set forth in the rule.

With respect to any application which you may desire to make of this court to obtain the review contemplated by the above-quoted provision, please be advised that all applications require strict adherence to the appropriate formalities as set forth in the Rules of this court and the Federal Rules of Civil Procedure. Of course, you should provide this court with all documents and records which you feel are necessary for the disposition of your claims.

Chief Judge Edelstein has also instructed me to inform you that you will not be required to effect service upon anyone.

Very truly yours,

Richard M. Goldstein

Richard M. Goldstein
Law Clerk

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Index #14

Letter to Ch. Judge A-15

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.,
Forest Hills, NY
11375

268-6320

January 23,1975

Hon. David N. Edelstein,
Chief Judge, USDistrict Court,
Foley Square, N.Y.

Re:An Attorney
M-2-238

Dear Judge:

To-day, there is reported from the U.S.Supreme Court, an opinion, adding its bearing to the instant situation, of an automatic order of disbarment, dated September 25,1974.(NYLJ p.1)(col.5)

That abrupt order cancelled out a right to practise in The Federal Courts, since 1928 except for the Rule 5 interim suspension contained in the Order to Show Cause , which was finally vacated by order dated May 19,1969 after a throughgoing investigation by the U.S.Attorney's Office (EDNY)

Your Honor's automatic order , inadvertent as it was, nonetheless compounded the offense of the State Court judgment, (cited alone as the basis for the issuance of Your Honor's order), in effect.

That was a serious disruption of one's life ; and the U.S.Supreme Court majority is reported, as of the to-day's opinion, "that a ten-day suspension, "without a hearing"

> 'was a serious event in the life of the suspended child'."

The state judgment was in disregard of the gurantee State statute, that no discipline shall be ordered "BEFORE"(Sec.90(2)J.L.) notice and hearing; and the Federal Court rule 5 employs the very language, which a U.S.Supreme Court case uses, the Selling case, 243 US 46, which also held that the state court judgment

> "is not conclusively binding on the Federal Courts."

I submit I have suffered great disruption; and again urge that the order of restoration should be equally instant, (in protection of the "property right", which The Supreme Court finds resident, also, in children,) as was the order of disbarment.

Most respectfully,

William R. Klein

k.t

Quest 15

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(Exh 16) Letter to Ch. Judge A-16

WILLIAM R. KLEIN
Room 510, 118021
Queens Blvd.,
Forest Hills, NY
11375

268-6320

April 4,1975

Hon.David N.Edelstein
Chief Judge,U.S.D.C.
Foley Square,N.Y.C.

Re:Order of September 25,1974

Dear Judge,

I have been repeatedly informed that'investigation' requirements account for the delay in righting the wrong inadvertently effectuated , to my great injury by the entry of the above order,ex parte.

On January 3 1975,and again on April 1,1975,your confrere of the Eastern District, Judge Neaher, had judicial occasion to correct the error, represented by the said Order,and to declare the error implicit therein, though,of course,not aware of that order per se.He had made the same inadvertent error, in another form, to wit, an handwritten endorsement(12-8-74).

My clients have a right, and it is now asserting itself urgently,to a continuation of my services in their matter, which they will not entrust to another.

I have endeavored to convey this urgency in most recent visit to your Chambers, the first such. I shall find myself at the Courthouse on Monday, April 7, 1975, when I should hope that Your Honor will,duly, sign the proposed order which ,it had been conveyed to me in writing from your Chambers,I should then submit for signature. You have that order,I assume.

Respectfully,

William R.Klein

k.t

Letter to Ch. Judge A-18

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.
Forest Hills, NY
Zip 11375- 268-6320

October 10,1975

Chief Judge,
Hon.David N.Edelstein
U.S.District Court
Southern District N.Y.
Foley Square, N.Y.

RE: Reinstatement,with vacature of ex parte order of disbarment.

Honored Sir:

On November 4,1974,your Chambers advised that application would be in order ,in the relation of Your Honor's ex - parte Order,directing the striking of the writer's name from the roll of attorneys, in form also ex-parte.It was made.

I am presently a member of the Bar of the Federal Courts of the Eastern District of New York, and of the District of Columbia; and process pends for basic correction of the judgment entered in the Appellate Division, 2nd Department,(as void upon its face, for lack of due-process recitals, as required by the State s CPLR.)

Whether the delay herein since the entry of Your Honor's order of September 25,1974 has been due to preoccupation with the Case complex of the IBM , or elsewise,you will from your files recall the urgencies which have from time to time, impelled me to write.Naturally,I am in your nands and have had to wait upon your convenience, in this wholly ex parte situation.

District Judge Wyatt of your Court in Spanos v.Skouras 235 F.Supp. 1,(1964),had occasion to render opinion most relevant here and now, citing that "Theard" decision of the U.S.Supreme Court,which had contributed so forcefully in bringing me reinstatement,after similarly ex parte suspension order in the Eastern District NY. with the no little aid of the U.S.Attorney ,Hon.Joseph P.Hoey,EDNY. Judge Wyatt wrote:

> "It would of course be a most unusual case, but under the Theard decision,a lawyer,disbarred in New York might STILL CONTINUE TO BE A MEMBER OF THE BAR OF THIS COURT.If so, such a lawyer could surely recover the reasonable value of services rendered in a matter pending in this Court.It would seem that New York could not constitutionally deprive nim of recovery in the Courts of this state,and his right to relief in this Court would seem clear.

Judge Wyatt also cited opinion in Cochran v.Burdick,63

Judge #18 56a

App. D.C. 70 F(2) 754,6, holding with pertinence here, 70 F(2) 754,6(1934):

> "Plaintiff was a lawyer in good standing in other courts,and was entitled to rely upon the general practise of courts of record,both state and federal,to permit members of thebar in other jurisdictions to appear as counsel on trial and in argument of special causes."

(In previous writings, I have called attention to my professional engagements , which were beclouded by the ex parte order, and which became additional occasion for my clearance, if it properly lay.)

In the foregoing light, may I now ask for ex parte order of cancellation of the order of September 25,1974, parallel with that of the Court of the Eastern District of May 18,1969 (Dooling D.J.), or an early hearing for any further necessary clarification.

Respectfully,

WILLIAM R. KLEIN

k.t

57a

Letter to Ch. Judge A-19

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.,
Forest Hills, NY
11375 268-6320

November 26, 1975

Hon. David M. Edelstein,
Chief Judge, U.S.D.C.
Southern District, NY
Foley Square, N.Y.

Re: Attorney
M-2-238

Honored Sir:

Pursuant to suggestion made by your Law Clerk, I am hereby requesting a time to be fixed for an appointment at Chambers or at Court, for a hearing upon an exparte proposed order, which was submitted at Chambers' instance in respect of the above matter, a long time ago.

The originally submitted ex parte order for vacature, of a prior ex parte order in instant cancellation of Bar membership, in your Court, has since been supplemented with additional supporting papers reflecting subsequent events, tending to throw further light upon the situation. The ex parte cancellation order was made in or about August of 1974.

I am writing because your Law Clerk informed me that a writing of request was required.

Respectfully

WILLIAM R. KLEIN

k.t

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58a

Letter to Ch. Judge A-20

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.
Forest Hills, NY.
11375 263-6520

December 1st, 1975

Hon. David N. Edelstein,
Chief Judge, U.S.D.C.
20 Foley Square, N.Y.

Re: Attorney
M-2-238

Honored Sir:

Pursuant to Chambers request by phone this A.M., I am confirming hereby that my desire for hearing upon my outstanding ex parte application, made in that form, upon direction of the Chambers, includes, also, alternatively, at the service of the Chief Judge, a submission to any questions he may incline to putting, in the interest of clarification of this cause.

Appreciating your courtesy toward early disposition of this matter, I remain, Sir,

Yours respectfully

WILLIAM R. KLEIN

k.t

Index #20

59a

Letter from Ch Judge

A-21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

CHAMBERS OF
DAVID N. EDELSTEIN
CHIEF JUDGE

December 31, 1975

Mr. William Robert Klein
118-21 Queens Boulevard
Forest Hills, N. Y. 11375

Re: In the Matter of William Robert Klein
M-2-238

Dear Mr. Klein:

You are hereby requested to appear before this court on January 16, 1976 at 10:00 a.m. in Courtroom 110, United States Courthouse, Foley Square, New York City, New York.

At that time you will be given an opportunity to address with particularity the grounds supporting your application under Local Rule 5(d) in the above-captioned matter.

David N. Edelstein
Chief Judge

Index # 21

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Exh 23

A-23

WILLIAM R. KLEIN
Room 510, 118-21
Queens Blvd.
Forest Hills, NY
11375 268-6320

February 4,1976

Hon.David N.Edelstein,
Chief Judge,USDC-SDNY
Foley Square, N.Y.

Re:Klein-automatic disbarment

Honored Sir:

To-day the New York Law Journal reported in this matter:

"See Opinion".

Your Chambers, on call, advised that the disposition was one of "denial",with relatively short opinion.

Unusual traumatic situations often call for or warrant unusual dramatic approaches.

And so,the writer has seen fit to further implement the within ex parte record by this statement, in advance of receiving or reading said Opinion, that the contents hereof may not be attributable as response to the content of said Opinion.

It will be remembered that this proceeding before the Chief Judge was authorised to be a one-to-one submission, with full opportunity to meet whatever reached the Judge,and with full opportunity to answer to any questions that might arise as result thereof, fairly speaking, in fairly balanced procedure.

The Chief Judge's Office received in 1974, a decree for his consideration in ostensible final judgment of disbarment, from a local State Court,entered dated June 29,1965, entirely unbeknown to the writer;and the writer received an Order of the Chief Judge in ex parte disbarment herein, received October 8,1974 (filed September 25,1974), cancelling a membership in good standing since 1928, herein.

For more than one year,repeated inquiry at Chambers met with the bare response that the matter was under"study"or"investigation",even while urgency of livelihood considerations was pressed;until finally in December,1975,Chambers acknowledged that our requested hearing,and to meet any questions that might have arisen in the Chief Judge'sstudy, or mind, thereon, was being granted, to take place in January,1976.

Judge #23

6/a

A hearing, present the Chief Judge and his Court staff was had on January 16,1976, lasting one hour, in open Court. Minutes thereof were duly taken,and I here set forth what occurred, as personal memory serves,apart from my statement of the history and citation of law authorities.

The Judge at no time, took exception to the historic recitals, the recitals of legal authorities, state and Federal , or in fact, to any portion of my delivery;made little comment; asked whether I was aware that the Appellate Division,2nd Department (the original decree-issuing State Court,had "yesterday""denied" application for reinstatement, to which I responded with surprise,declaring that I had been"invited" to make that application, duly. The Chief Judge also inquired whether the pending Federal action ,brought by me under Section 1983 USC Title 28 ,did not stand"dismissed"(action to nullify that 1965 judgment of the State Court,as a constitutional nullity ab initio), to which I replied , with explanation, in the negative.

Thus, in one respect, the Judge's"study" had led him into possession of advance knowledge of my own status; and in the other to prejudicial understanding of matters, vitally affecting this applicant's status.At no time, during the investigative period of 1974-5,until the hearing in 1976, was the writer informed of any of the ex parte discoveries, if any,offering contradiction of the affidavits obtained by Chambers from me, in aid and support of application for cancellation of the Chief Judge's ex parte order , nor confronted with any such at the hour-long hearing.

So that,as far as known to this applicant,the record before the Chief Judge,which he made under authority vested in him by the District Court's Rule 5(d), stands , as unilaterally presented, by the Chief Judge's express authorisation,herein in uniform consonance with the provisions of Rule 5d, insofar as that Rule bars,specifically and respectively,in its subdivisions,any disbarment in the District Court,based upon constitutionally defective state proceedings and procedures.

It was in anticipation of such possible departure in the Office of the Chief Judge,that,after the untranscribed hearing,the applicant at once despatched a "MEMORANDUM" in connection with said hearing, referred to a three-year prior and thorough-going Investigation made by the U.S.Attorney (1965-8),and requested,

> "that if the Court doubts the assertions of fact, herein and on the hearing"

the applicant

> "will welcome a hearing with sworn testimony"

amongst other open alternatives, in this"narrow-issue"proceeding.

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This statement would not be complete without a further recital of fact:

That on Saturday, at 10:30 A.M. on January 24,1976, a reproduced copy of said Memorandum(of which only an Original for the Court, and copy for writer,had been made), an envelope , addressed in hand print,without any return address,arrived in the mails at writer's office address; that thereupon,the writer called Chambers of the Chief Judge to explain,perhaps,said return , but in vain.

At this concluding point, it must be stated that the "denial" of our application for cancellation , as thus far conveyed to us in unqualified terms,must have constituted a disposition,based in accusatory matters of which the applicant cannot be aware;and thus the applicant has been denied the due-process opportunity to confront his accusers(if such), in a matter, heretofore treated by the U.S.Supreme Court,of the highest concern to one in his professional standing.

Respectfully submitted

WILLIAM R. KLEIN
Applicant pro se

k,t

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Notice of Appeal

A-25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

WILLIAM ROBERT KLEIN a/k/a
WILLIAM R. KLEIN

An Attorney

M 2 -368

WILLIAM ROBERT KLEIN,

Appellant

DAVID N. EDELSTEIN,
Chief Judge, U.S.D.C.
S.D.N.Y.

Respondent

SIRS:

PLEASE TAKE NOTICE that the Undersigned, hereby appeals from the final order and memorandum decision, dated March 19, 1976 of the Hon. David N. Edelstein, Chief Judge of the Court herein, and as embracing the Opinion No. 43 821, on filed herein, dated February 2nd, 1976, denying the application of the Undersigned, for a formal, sworn hearing of the facts and circumstances, bearing upon the due process protections, set forth in the herein controlling Court Rule 5d, and further denying to the Undersigned the benefits of the the rule and authority of the United States Supreme Court, in and for such matters, and other controlling authority, and from all the final ruling and holdings, of the Chief Judge, as contrary to the law and the facts, to the United States Court of Appeals, 2nd Circuit.

Dated New York, March 25, 1976

WILLIAM R. KLEIN, pro se applic
O.& P.O.Address
118-21 Queens Blvd, Forest Hills
New York City, N.Y. 11375
Tel. 263-6520

To:
The Honorable Chief Judge
The Clerk of the Court
herein.

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